

REFERENCE TITLE: juvenile competency

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Senate
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SB 1128

Introduced by
Senators Tibshraeny, Gray; Representatives Gallardo, Yarbrough; Senator
Jarrett

AN ACT

AMENDING SECTIONS 8-271, 8-291, 8-291.01, 8-291.08, 8-291.10 AND 36-551,
ARIZONA REVISED STATUTES; RELATING TO JUVENILE COMPETENCY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-271, Arizona Revised Statutes, is amended to
3 read:

4 8-271. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Dually adjudicated child" means a child who is found to be
7 dependent or temporarily subject to court jurisdiction pending an
8 adjudication of a dependency petition and who is alleged or found to have
9 committed a delinquent or incorrigible act.

10 2. "Entity" means A COUNTY ATTORNEY, the department of economic
11 security, the department of juvenile corrections, A PROBATION OFFICER, A
12 GUARDIAN AD LITEM or a child welfare agency that has been granted legal care,
13 custody and control of a child by order of the juvenile court and that is
14 responsible for securing inpatient psychiatric acute care services or
15 residential treatment services for a child. Entity includes a probation
16 department or juvenile detention center that either recommends or is ordered
17 by the court to provide inpatient psychiatric acute care services or
18 residential treatment services for a child.

19 3. "Inpatient assessment" includes all of the following:

20 (a) The observation of a child's behavior while the child is in an
21 inpatient assessment facility.

22 (b) Psychological or psychiatric testing, if indicated.

23 (c) A determination as to whether a child needs inpatient psychiatric
24 acute care services and whether inpatient psychiatric acute care services are
25 the least restrictive available alternative.

26 (d) The administration of psychotropic medication and medication
27 monitoring, if necessary to complete the assessment or to prevent the child
28 from being a danger to self or others.

29 (e) A written report that summarizes the results of an inpatient
30 assessment, including specific recommendations for follow-up care.

31 (f) A psychiatric or psychological assessment, including a clinical
32 interview with a child.

33 (g) An explanation to a child of the least restrictive alternatives
34 available to meet the child's mental health needs.

35 (h) A determination as to whether the child may be suffering from a
36 mental disorder, is a danger to self or others or is persistently or acutely
37 disabled or gravely disabled, as defined in section 36-501.

38 (i) A review of a child's medical, social and psychological records,
39 if available.

40 4. "Level one behavioral health facility" means a behavioral health
41 service agency that is licensed by the department of health services and that
42 provides a structured treatment setting with twenty-four hour a day
43 supervision and an intensive treatment program.

44 5. "Outpatient assessment" includes all of the following:

1 (a) A psychiatric or psychological assessment, including a clinical
2 interview with a child.

3 (b) An explanation to a child of the least restrictive alternatives
4 available to meet the child's mental health needs if determined at the time
5 of the assessment.

6 (c) A determination as to whether the child may be suffering from a
7 mental disorder, is a danger to self or others or is persistently or acutely
8 disabled or gravely disabled.

9 (d) A review of a child's medical, social and psychological records,
10 if available.

11 (e) A determination as to whether the child needs an inpatient
12 assessment or inpatient psychiatric acute care services and whether an
13 inpatient assessment or inpatient psychiatric acute care services are the
14 least restrictive available alternative.

15 6. "Physician" means a person who is licensed pursuant to title 32,
16 chapter 13 or 17.

17 7. "Psychiatric acute care facility" or "inpatient assessment
18 facility" means a facility that is licensed by the department of health
19 services as a level one behavioral health facility and that provides
20 psychiatric acute care services.

21 8. "Psychiatric acute care services" means any of the following:

22 (a) Emergency or crisis behavioral health services.

23 (b) Psychiatric and psychological assessments and short-term intensive
24 behavioral health counseling and treatment for acute episodes or mental
25 disorders.

26 (c) Medication stabilization and twenty-four hour a day nursing care
27 for a child who suffers from acute psychiatric or mental disorders or who
28 needs to have a chronic mental illness stabilized.

29 9. "Psychiatrist" means a person who is licensed pursuant to title 32,
30 chapter 13 or 17.

31 10. "Psychologist" means a person who is licensed pursuant to title 32,
32 chapter 19.1.

33 11. "Residential treatment services" means services, other than
34 psychiatric acute care services, that are provided by a level one behavioral
35 health facility.

36 Sec. 2. Section 8-291, Arizona Revised Statutes, is amended to read:

37 8-291. Definitions

38 In this article, unless the context otherwise requires:

39 1. "Clinical liaison" means a mental health expert or another
40 individual who has experience and training in mental health or developmental
41 disabilities and who is qualified and appointed by the court to aid in
42 coordinating the treatment or training of juveniles who are found incompetent
43 to stand trial. If mental retardation is an issue, the clinical liaison
44 shall be an expert in mental retardation.

2. "Incompetent" means a juvenile who does not have sufficient present ability to consult with the juvenile's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the juvenile. IMMATURITY ALONE DOES NOT RENDER A PERSON INCOMPETENT.

3. "Juvenile" means a person who is under eighteen years of age at the time the issue of competency is raised.

4. "Mental health expert" means a physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is all of the following:

(a) Familiar with this state's competency standards and statutes.
(b) Familiar with the treatment, training and restoration programs that are available in this state.

(c) Certified by the court as meeting court developed guidelines.

5. "RATIONAL UNDERSTANDING" MEANS THAT A JUVENILE IS ORIENTED IN TIME AND PLACE AND HAS AN AGE APPROPRIATE CAPACITY TO COMPREHEND THE CHARGES AGAINST THE JUVENILE AND THE JUDICIAL PROCEEDINGS.

Sec. 3. Section 8-291.01, Arizona Revised Statutes, is amended to read:

8-291.01. Effect of incompetency; request for examination

A. A juvenile shall not participate in a delinquency, incorrigibility or criminal proceeding if the court determines that the juvenile is incompetent to proceed.

B. At any time after the filing of a petition for delinquency or incorrigibility or a petition that seeks to transfer a juvenile to adult court, a party may request in writing or the court on its own motion may order that the juvenile be examined to determine if the juvenile is competent. The request shall state the facts in support of the request for a competency examination. A JUVENILE CAN BE FOUND TO BE INCOMPETENT. A FINDING OF MENTAL ILLNESS, DEFECT OR DISABILITY IS REQUIRED BEFORE A JUVENILE CAN BE FOUND TO BE INCOMPETENT. The presence of a mental illness, defect or disability alone is not grounds for finding a juvenile incompetent. The court shall not order a juvenile who is under the jurisdiction of the juvenile court to participate in a treatment program for the restoration of competency unless the court made a prior finding of probable cause pursuant to rule 3(f), rules of procedure for the juvenile court.

Sec. 4. Section 8-291.08, Arizona Revised Statutes, is amended to read:

8-291.08. Competency hearings; restoration orders

A. Within thirty days after a report is filed pursuant to section 8-291.07, the court shall hold a hearing to determine if a juvenile is competent to stand trial. The parties may introduce other evidence regarding the juvenile's mental condition or may submit the matter by written stipulation on the mental health expert's report or reports.

B. If the court finds that the juvenile is competent to stand trial, the proceedings shall continue without delay.

C. If the court initially finds that the juvenile is incompetent but may be restored to competency, the court shall order that the juvenile undergo an attempt at restoration to competency.

D. If the court initially finds that the juvenile is incompetent and there is not a substantial probability that the juvenile will be restored to competency within two hundred forty days, the court shall dismiss the matter ~~with~~ WITHOUT prejudice and shall initiate civil commitment proceedings, if appropriate. THE JUVENILE COURT RETAINS JURISDICTION OVER THE JUVENILE UNTIL CIVIL COMMITMENT PROCEEDINGS ARE INITIATED UNDER TITLE 36. The court ~~may~~ SHALL appoint a guardian ad litem to proceed with a dependency investigation. THE GUARDIAN AD LITEM SHALL PURSUE CIVIL COMMITMENT UNDER TITLE 36 IF ORDERED BY THE COURT.

E. All restoration orders that are issued by the court shall specify the following:

1. The name of the restoration program provider and the location of the program.
2. Transportation to the program site.
3. The length of the restoration program.
4. Transportation after the program ends.
5. The frequency of reports.

Sec. 5. Section 8-291.10, Arizona Revised Statutes, is amended to read:

8-291.10. Reports; hearings

A. The mental health expert who consults with the restoration program shall submit a written report to the court before any hearing that is held pursuant to this section. The clerk of the court shall seal and file the original report. The mental health expert shall provide a copy of the report to the defense attorney for redaction. Within twenty-four hours after receiving a copy of the report, the defense attorney shall provide copies of the redacted report to the state and the court. A report shall be filed as follows:

1. Every sixty days.
2. Whenever the mental health expert believes the juvenile is competent to proceed.
3. Whenever the mental health expert believes that there is no substantial probability that the juvenile will regain competency before the expiration of the order for participation in a competency restoration program.
4. Fourteen days before the expiration of the maximum term of the restoration order.

B. The report shall include the mental health expert's findings and the information required under section 8-291.07. If the report states that the juvenile remains incompetent, the report shall state the likelihood that

1 the juvenile will regain competency, an estimated time period for the
2 restoration of competency and recommendations for program modification, if
3 necessary. If the report states that the juvenile has regained competency,
4 the report shall state the effect, if any, of any limitations that are
5 imposed by any medications used in the effort to restore the juvenile's
6 competency.

7 C. The court may hold a hearing regarding a juvenile's progress toward
8 competency on the request of the prosecutor, the defense attorney or the
9 guardian ad litem.

10 D. Except as provided in subsection C of this section, the court shall
11 hold a hearing to determine the juvenile's progress towards regaining
12 competency as follows:

13 1. On the court's own motion.

14 2. On receipt of a report that is submitted by the restoration program
15 pursuant to subsection A of this section.

16 3. Not less than three months before the juvenile's eighteenth
17 birthday.

18 E. If at the hearing conducted pursuant to subsection D of this
19 section the court finds that the juvenile has regained competency, the
20 juvenile shall be returned to the juvenile court and the proceedings against
21 the juvenile shall continue in juvenile court without delay.

22 F. If at a hearing based on a report that is filed pursuant to
23 subsection A, paragraph 4 of this section the juvenile court finds that the
24 juvenile has not been restored to competency but that the juvenile has made
25 substantial progress toward restoration to competency, the court may extend
26 the restoration program period for an additional sixty days for good cause if
27 the court determines by clear and convincing evidence that further
28 participation will lead to restoration to competency.

29 G. If at a hearing that is held pursuant to subsection D, paragraph 3
30 of this section the court finds that the juvenile is not restored to
31 competency and is not restorable within the time left before the juvenile's
32 eighteenth birthday, the court shall dismiss the charges ~~with prejudice if~~
33 ~~the offense is a misdemeanor, may dismiss the charges with prejudice if the~~
34 ~~offense is not an offense listed in section 13-501, subsection A or B or~~
35 ~~shall dismiss the charges without prejudice if the offense is an offense~~
36 ~~listed in section 13-501, subsection A or B.~~

37 H. If at a hearing that is held pursuant to subsection C or subsection
38 D, paragraph 1 or 2 of this section the court finds that the juvenile is
39 incompetent to proceed and that there is not a substantial probability that
40 the juvenile will regain competency within two hundred forty days after the
41 date of the original finding of incompetency, the court shall dismiss the
42 charges ~~with~~ WITHOUT prejudice and shall initiate civil commitment
43 proceedings, if appropriate. The court shall order the guardian ad litem to
44 proceed with a dependency investigation.

1 I. THE FAILURE OF THE JUVENILE TO ATTEND OR COOPERATE IN A RESTORATION
2 PROGRAM TOLLS THE TIME ALLOWED FOR RESTORATION TO COMPETENCY. THE COURT MAY
3 EXTEND THE RESTORATION PROGRAM PERIOD FOR UP TO SIX MONTHS FOR A FAILURE TO
4 ATTEND OR COOPERATE AND MAY ORDER A SIX MONTH RESTORATION PROGRAM EXTENSION
5 FOR EACH SUBSEQUENT FAILURE TO ATTEND OR COOPERATE.

6 Sec. 6. Section 36-551, Arizona Revised Statutes, is amended to read:

7 36-551. Definitions

8 In this chapter, unless the context otherwise requires:

9 1. "Adaptive behavior" means the effectiveness or degree to which the
10 individual meets the standards of personal independence and social
11 responsibility expected of the person's age and cultural group.

12 2. "Adult developmental home" means a residential setting in a family
13 home in which the care, physical custody and supervision of the adult client
14 are the responsibility, under a twenty-four hour care model, of the licensee
15 who, in that capacity, is not an employee of the division or of a service
16 provider and the home provides the following services for a group of siblings
17 or up to three adults with developmental disabilities:

18 (a) Room and board.

19 (b) Habilitation.

20 (c) Appropriate personal care.

21 (d) Appropriate supervision.

22 3. "Adult household member" means a person who is at least eighteen
23 years of age and who resides in an adult developmental home, child
24 developmental foster home, secure setting or home and community based service
25 setting for at least thirty days or who resides in the household throughout
26 the year for more than a cumulative total of thirty days.

27 4. "Advisory council" means the developmental disabilities advisory
28 council.

29 5. "Arizona training program facility" means a state operated
30 institution for developmentally disabled clients of the department.

31 6. "Attributable to mental retardation, epilepsy, cerebral palsy or
32 autism" means that there is a causal relationship between the presence of an
33 impairing condition and the developmental disability.

34 7. "Autism" means a condition characterized by severe disorders in
35 communication and behavior resulting in limited ability to communicate,
36 understand, learn and participate in social relationships.

37 ~~9.~~ 8. "Case management" means coordinating the assistance needed by
38 persons with developmental disabilities and their families in order to ensure
39 that persons with developmental disabilities attain their maximum potential
40 for independence, productivity and integration into the community.

41 ~~8.~~ 9. "Case manager" means a person who coordinates the
42 implementation of the individual program plan of goals, objectives and
43 appropriate services for persons with developmental disabilities.

1 10. "Cerebral palsy" means a permanently disabling condition resulting
2 from damage to the developing brain which may occur before, after or during
3 birth and results in loss or impairment of control over voluntary muscles.

4 11. "Child developmental foster home" means a residential setting in a
5 family home in which the care, physical custody and supervision of the child
6 are the responsibility, under a twenty-four hour care model, of the licensee
7 who serves as the foster parent of the child in the home setting and who, in
8 that capacity, is not an employee of the division or of a service provider
9 and the home provides the following services for a group of siblings or up to
10 three children with developmental disabilities:

11 (a) Room and board.

12 (b) Habilitation.

13 (c) Appropriate personal care.

14 (d) Appropriate supervision.

15 12. "Client" means a person receiving developmental disabilities
16 services from the department.

17 13. "Community residential setting" means a child developmental foster
18 home, an adult developmental home or a secure setting operated or contracted
19 by the department in which persons with developmental disabilities live and
20 are provided with appropriate supervision by the service provider responsible
21 for the operation of the residential setting.

22 14. "Consent" means voluntary informed consent. Consent is voluntary
23 if not given as the result of coercion or undue influence. Consent is
24 informed if the person giving the consent has been informed of and
25 comprehends the nature, purpose, consequences, risks and benefits of the
26 alternatives to the procedure, and has been informed and comprehends that
27 withholding or withdrawal of consent will not prejudice the future provision
28 of care and services to the client. In cases of unusual or hazardous
29 treatment procedures performed pursuant to section 36-561, subsection A,
30 experimental research, organ transplantation and ~~non-therapeutic~~
31 **NONTHERAPEUTIC** surgery, consent is informed if, in addition to the foregoing,
32 the person giving the consent has been informed of and comprehends the method
33 to be used in the proposed procedure.

34 15. "Daily habilitation" means habilitation as defined in this section
35 except that the method of payment is for one unit per residential day.

36 16. "Department" means the department of economic security.

37 17. "Developmental disability" means either a strongly demonstrated
38 potential that a child under the age of six years is developmentally disabled
39 or will become developmentally disabled, as determined by a test performed
40 pursuant to section 36-694 or by other appropriate tests, or a severe,
41 chronic disability which:

42 (a) Is attributable to mental retardation, cerebral palsy, epilepsy or
43 autism.

44 (b) Is manifest before age eighteen.

45 (c) Is likely to continue indefinitely.

(d) Results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) Self-care.
- (ii) Receptive and expressive language.
- (iii) Learning.
- (iv) Mobility.
- (v) Self-direction.
- (vi) Capacity for independent living.
- (vii) Economic self-sufficiency.

(e) Reflects the need for a combination and sequence of individually planned or coordinated special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration.

18. "Director" means the director of the department of economic security.

19. "Division" means the division of developmental disabilities in the department of economic security.

20. "Epilepsy" means a neurological condition characterized by abnormal electrical-chemical discharge in the brain. This discharge is manifested in various forms of physical activities called seizures.

21. "Group home" means a residential setting for not more than six persons with developmental disabilities that is operated by a service provider under contract with the division and that provides, in a shared living environment, room and board and daily habilitation. Group home does not include an adult developmental home, a child developmental foster home, a secure setting or an intermediate care facility for the mentally retarded.

22. "Guardian" means the [DEPARTMENT OF JUVENILE CORRECTIONS, A COUNTY ATTORNEY, A JUVENILE PROBATION DEPARTMENT, A JUVENILE DETENTION CENTER, A COURT APPOINTED GUARDIAN AD LITEM OR THE](#) person who, under court order, is appointed to fulfill the powers and duties prescribed in section 14-5312. Guardian does not include a guardian pursuant to section 14-5312.01.

23. "Guardianship services" means services offered by a provider under contract with the division of developmental disabilities to act as a guardian to persons with developmental disabilities where no other appropriate guardian is available. The service provider ~~shall~~, in addition to the disclosure requirements of section 14-5106, [SHALL](#) not provide other services to the ward that create a conflict of interest or jeopardize in any way its ability to represent the ward as guardian.

24. "Habilitation" means the process by which a person is assisted to acquire and maintain those life skills that enable the person to cope more effectively with ~~the~~ personal and environmental demands and to raise the level of the person's physical, mental and social efficiency.

25. "Indigent" means a developmentally disabled person whose estate or parent is unable to bear the full cost of maintaining or providing services for that person in a developmental disabilities program.

1 26. "Individual program plan" means a written statement of services to
2 be provided to a person with developmental disabilities, including
3 habilitation goals and objectives, which is developed following initial
4 placement evaluation and revised after periodic evaluations.

5 27. "Intermediate care facility for the mentally retarded" means a
6 facility that primarily provides health and rehabilitative services to
7 persons with developmental disabilities that are above the service level of
8 room and board or supervisory care services or personal care services as
9 defined in section 36-401 but that are less intensive than skilled nursing
10 services.

11 28. "Large group setting" means a setting which in addition to
12 residential care provides support services such as therapy, recreation and
13 transportation to seven or more developmentally disabled persons who require
14 intensive supervision.

15 29. "Least restrictive alternative" means an available program or
16 facility that fosters independent living, that is the least confining for the
17 client's condition and where service and treatment are provided in the least
18 intrusive manner reasonably and humanely appropriate to the individual's
19 needs.

20 30. "Likely to continue indefinitely" means that the developmental
21 disability has a reasonable likelihood of continuing for a protracted period
22 of time or for life.

23 31. "Manifested before age eighteen" means that the disability must be
24 apparent and have a substantially limiting effect on a person's functioning
25 before age eighteen.

26 32. "Mental retardation" means a condition involving subaverage general
27 intellectual functioning and existing concurrently with deficits in adaptive
28 behavior manifested before age eighteen.

29 33. "Physician" means a person licensed to practice pursuant to title
30 32, chapter 13 or 17.

31 34. "Placement evaluation" means an interview and evaluation of a
32 developmentally disabled person and a review of the person's prior medical
33 and program histories to determine the appropriate developmental disability
34 programs and services for the person and recommendations for specific program
35 placements for the person.

36 35. "Psychologist" means a person licensed pursuant to title 32,
37 chapter 19.1.

38 36. "Respite services" means services that provide a short-term or
39 long-term interval of rest or relief to the care provider of a
40 developmentally disabled person.

41 37. "Responsible person" means the parent or guardian of a
42 developmentally disabled minor, the guardian of a developmentally disabled
43 adult or a developmentally disabled adult who is a client or an applicant for
44 whom no guardian has been appointed.

1 38. "Secure facility" means a facility that is licensed and monitored
2 by the division, that is designed to provide both residential and program
3 services within the facility and that is operated to prevent clients from
4 leaving because of the danger they may present to themselves and the
5 community.

6 39. "Service provider" means a person or agency that provides services
7 to clients pursuant to a contract, service agreement or qualified vendor
8 agreement with the division.

9 40. "State operated service center" means a state owned or leased
10 facility that is operated by the department and that provides temporary
11 residential care and space for child and adult services which include respite
12 care, crisis intervention and diagnostic evaluation.

13 41. "Subaverage general intellectual functioning" means measured
14 intelligence on standardized psychometric instruments of two or more standard
15 deviations below the mean for the tests used.

16 42. "Substantial functional limitation" means a limitation so severe
17 that extraordinary assistance from other people, programs, services or
18 mechanical devices is required to assist the person in performing appropriate
19 major life activities.

20 43. "Supervision" means the process by which the activities of an
21 individual with developmental disabilities are directed, influenced or
22 monitored.